

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

East Vassalboro Post Office
East Vassalboro, Maine

Docket No. A2012-34

ORDER AFFIRMING DETERMINATION

(Issued February 9, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On October 25, 2011, Charles Ferguson (Petitioner Ferguson) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the East Vassalboro, Maine post office (East Vassalboro post office).² An additional petition for review was received from the Save Our Post Office Committee (Petitioner Committee).³ The Final Determination to close the East Vassalboro post office is affirmed.⁴

II. PROCEDURAL HISTORY

On November 1, 2011, the Commission established Docket No. A2012-34 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁵

² Petition for Review received from Charles Ferguson regarding the East Vassalboro, Maine Post Office 04935, October 25, 2011 (Ferguson Petition).

³ Petition for Review received from Save Our Post Office Committee regarding the East Vassalboro, Maine Post Office 04935, October 25, 2011 (Committee Petition).

⁴ The Commission is divided equally, 2-2, on the outcome of the appeal. In the absence of a majority, the Final Determination stands.

⁵ Order No. 940, Notice and Order Accepting Appeal and Establishing Procedural Schedule, November 1, 2011.

On November 9, 2011, the Postal Service filed the Administrative Record with the Commission.⁶ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁷

Petitioner Committee filed a participant statement supporting its petition.⁸ On January 3, 2012, the Public Representative filed comments.⁹

III. BACKGROUND

The East Vassalboro post office provides retail postal services and service to 74 post office box customers. Final Determination at 2. No delivery customers are served through this office. The East Vassalboro post office, an EAS-55 level facility, provides retail service from 7:00 a.m. to 11:00 a.m., and 1:00 p.m. to 4:30 p.m., Monday through Friday, and 7:30 a.m. to 11:15 a.m. on Saturday. Lobby access hours are 7:00 a.m. to 11:00 a.m., and 1:00 p.m. to 4:30 p.m., Monday through Friday, and the same as retail access hours on Saturday. *Id.*

The postmaster position became vacant on October 1, 1992 when the East Vassalboro postmaster retired. A non-career officer-in-charge (OIC) was installed to operate the office. *Id.* at 2; Administrative Record Item No. 15. Retail transactions average 18 transactions daily (17 minutes of retail workload). Final Determination at 2. Office receipts for the last 3 years were \$24,461 in FY 2008; \$22,668 in FY 2009; and \$22,457 in FY 2010. *Id.* There are no permit or postage meter customers. By closing this office, the Postal Service anticipates savings of \$28,773 annually. *Id.* at 8.

⁶ The Administrative Record is attached to the United States Postal Service Notice of Filing, November 9, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Vassalboro, ME Post Office and Continue to Provide Service by Rural Route Service (Final Determination).

⁷ United States Postal Service Comments Regarding Appeal, December 28, 2011 (Postal Service Comments). Thereafter, the Postal Service filed a Motion for Extension of Time to File Comments in Response to Petitioners' Submissions, December 20, 2011. The motion is granted.

⁸ Participant Statement received from Save Our Post Office Committee, November 22, 2012 (Committee Participant Statement).

⁹ Comments of the Public Representative, January 3, 2012 (PR Comments).

After the closure, retail services will be provided by the North Vassalboro post office located approximately 2 miles away.¹⁰ Delivery service will be provided by rural route service through the North Vassalboro post office. *Id.* The North Vassalboro post office is an EAS-16 level office, with retail hours of 8:00 a.m. to 12:00 p.m., and 2:00 p.m. to 4:45, Monday through Friday, and 8:00 a.m. to 11:45 a.m. on Saturday. One hundred and sixty-nine (169) post office boxes are available. The Postal Service will continue to use the East Vassalboro name and ZIP Code. *Id.* at 3, Concern No. 8.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioner Committee contends that the community meeting was not well publicized and was held at an inconvenient time. Committee Petition at 1. Petitioner Committee opposes the closure of the East Vassalboro post office. They also argue that the Postal Service cannot close a post office simply because it is not self-sustaining. *Id.* at 1. They assert that rural route service will not provide East Vassalboro residents with the required maximum degree of regular and effective postal services. *Id.* at 1; Committee Participant Statement at 2. Petitioner Committee states further that the post office is the heart of their primarily pedestrian community, closure would be a blow to community life, the town's other small businesses, and that it would be a hardship for the community's many elderly, widowed or disabled residents to drive to another post office to obtain services. *Id.* Petitioner Committee also questions the accuracy of the Postal Service's calculation of economic savings. *Id.* at 2-3.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the East Vassalboro post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact on the East Vassalboro community; and (3) the economic savings expected to result from discontinuing the East Vassalboro post office. *Id.*

¹⁰ *Id.* at 2. MapQuest estimates the driving distance between the East Vassalboro and North Vassalboro post offices to be approximately 2.4 miles (3 minutes driving time).

at 1-2. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the East Vassalboro post office should be affirmed. *Id.* at 2.

The Postal Service explains that its decision to close the East Vassalboro post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the East Vassalboro community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised regarding the effect on postal services, the effect on the East Vassalboro community, the economic savings, and the effect on postal employees. *Id.* at 19-20.

Public Representative. The Public Representative contends that the Postal Service has adequately considered the petitioners' concerns. Public Representative Comments at 2. She concludes that the Postal Service has followed applicable procedures, that the decision to close the East Vassalboro Post Office is supported by substantial evidence and is neither arbitrary nor capricious. *Id.*

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal

Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. *Id.* § 404(d)(5).

The record indicates the Postal Service took the following steps in providing notice of its intent to close. On April 26, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the East Vassalboro post office. Final Determination at 2. A total of 175 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 85 questionnaires were returned. On May 26, 2011, the Postal Service held a community meeting at Vassalboro Town Hall Conference Room to address customer concerns. Nine (9) customers attended. *Id.*

The Postal Service posted the proposal to close the East Vassalboro post office with an invitation for comments at the East Vassalboro and North Vassalboro post offices from June 14, 2011 through August 15, 2011 *Id.* at 2. The Final Determination was posted at the same 2 post offices from October 5, 2011 through November 5, 2011. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C.

§ 404(d)(2)(A). The Postal Service must also comply with the provisions of 39 U.S.C. § 101(b), which prohibits closing any small post office solely for operating at a deficit.

Effect on the community. East Vassalboro, Maine is an incorporated community located in Kennebec County, Maine. Administrative Record, Item No. 16. The community is administered politically by Vassalboro Board of Selectmen. Police protection is provided by Kennebec County Sheriff. Fire protection is provided by Vassalboro Fire Department. The community is comprised of the self-employed, farmers, retirees and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the East Vassalboro community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the East Vassalboro post office, customers raised concerns regarding the effect of

the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 7-8.

Petitioner Committee raises the issue of the effect of the closing on East Vassalboro, contending that it is the heart of the community. Committee Participant Statement at 2. The Postal Service states that residents may continue to meet informally to socialize at other locations in town such as businesses and churches. Postal Service Comments at 13. The Postal Service asserts that community identity derives from the interest and vitality of its residents and their use of its name. *Id.* at 13. Customers who retain post office box service will retain the East Vassalboro name and ZIP Code in their addresses. *Id.* Customers who erect roadside mailboxes will be assigned a 911 coded street address, the last line of which will be Vassalboro, ME 04989.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the East Vassalboro postmaster retired on October 1, 1992 and that an OIC has operated the East Vassalboro post office since then. Final Determination at 8. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the East Vassalboro post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to East Vassalboro customers. Postal Service Comments at 5. It asserts that customers of the closed East Vassalboro post office may obtain retail services at the North Vassalboro post office located 2 miles away. Final Determination at 2. Delivery service will be provided by rural carrier route service through the North Vassalboro post office. *Id.* The East

Vassalboro post office box customers may obtain Post Office Box Service at the North Vassalboro post office, which has 169 boxes available. *Id.*

For customers choosing not to travel to the North Vassalboro post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 6. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.* at 7.

Petitioner Committee contends that rural route service will not provide East Vassalboro residents with the required maximum degree of regular and effective postal services. Committee Petition at 1; Committee Participant Statement at 2. The Postal Service asserts that East Vassalboro customers will continue to receive regular and effective postal services by rural route service. Postal Service Comments at 6.

The “maximum degree” standard is not absolute. If it were, it could be used to attack virtually any form or level of service by hypothesizing an even higher quality or quantity of service. Rather, this standard must be interpreted and applied in a specific context by balancing relevant, and sometimes competing, considerations. The record in this case supports the conclusion that the Postal Service has attempted to identify and balance the relevant considerations and, in doing so, has satisfied the statutory standard.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$28,773. Final Determination at 8. It derives this figure by summing the following costs: postmaster salary and benefits (\$29,754) and annual lease costs (\$4,920), minus the cost of replacement service (\$5,901.00). *Id.*

Petitions question why the estimated \$50,000 worth of postage purchased annually by North Country Rivers was not credited to the East Vassalboro post office. Ferguson Petition at 1; Committee Participant Statement at 2-3. The Postal Service explains that because North Country Rivers now downloads all of its postage online,

those purchases are not attributed to one particular post office. Postal Service Comments at 17.

The Commission has previously observed that the Postal Service should include in its estimate of savings those costs likely to be eliminated by the closing. The East Vassalboro post office postmaster retired on October 1, 1992. Final Determination at 8. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the East Vassalboro post office has been staffed by an OIC for approximately twenty years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Petitioner Committee alleges that the Postal Service is closing the East Vassalboro post office solely for economic reasons. Committee Petition at 1; Committee Participant Statement at 3.

To be sure, economics plays a role in the Postal Service's decision. However, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the East Vassalboro post office (revenues declining and averaging only 18 retail transactions per day), the Postal Service took into account other factors such as the postmaster vacancy, the minimal impact on the community, and expected financial savings. In addition, it considered the alternate delivery and retail options available to customers. Final Determination at 2.

The Postal Service did not violate the prohibition in section 101(b) on closing the East Vassalboro post office solely for operating at a deficit.

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the East Vassalboro post office is affirmed.¹¹

It is ordered:

The Postal Service's determination to close the East Vassalboro, Maine post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

¹¹ See footnote 4, *supra*.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the East Vassalboro post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on October 1, 1992. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only an OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The fact that a non-career OIC has been in place since 1992 proves that the Service is under no obligation to fill the position with a full-time postmaster. In estimating savings in these circumstances, only the cost of an OIC should be considered.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the Administrative Record. Therefore, the decision to close should be remanded to the

Postal Service to correct the record and present a more considered evaluation of potential savings.

The Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of East Vassalboro, Maine and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility for almost 20 years since October 1992, not an EAS-55 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

In addition, the current lease does not terminate until April 13, 2013, and does not have a 30-day termination clause. Administrative Record, Item 15 at 1. The Postal Service should note that any savings from the lease will not be realized for more than 14 months.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the East Vassalboro post office and should be remanded.

Nanci E. Langley